

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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BRIAN SMITH,

Petitioner,

18-CV-883 (JLS) (MJR)

v.

JOSEPH NOETH, Superintendent,  
Attica Correctional Facility

Respondent.

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### DECISION AND ORDER

Petitioner Brian Smith commenced this action pursuant to 28 U.S.C. § 2254 seeking a Writ of Habeas Corpus by a Person in State Custody based on a judgment entered against him in Monroe County Court on November 2, 2007. Dkt. 1. In particular, a jury convicted him of first-degree manslaughter and second-degree criminal possession of a weapon in violation of New York law. *See id.* Petitioner challenges the constitutionality of those convictions on numerous grounds—including that the prosecution violated its *Brady* obligations, that Petitioner was improperly denied an evidentiary hearing, and that Petitioner's counsel was ineffective. *Id.*

This Court<sup>1</sup> ultimately referred the case to United States Magistrate Judge Michael J. Roemer for all proceedings under 28 U.S.C. §§ 636(b)(1)(A), (B), and (C). Dkt. 15. Petitioner filed a memorandum in support of his petition, Dkt. 23, and then filed a “Traverse of Law in Support of Habeas Corpus Reply.” Dkt. 29. Respondent filed an Answer and a memorandum in opposition. Dkt. 33, 37. Petitioner replied. Dkt. 38.

On June 27, 2023, Judge Roemer issued a Report, Recommendation, and Order (“R&R”) recommending that this Court dismiss the petition. Dkt. 39. He further recommended that this Court deny a “certificate of appealability pursuant to 28 U.S.C. § 2253(c)(1)(A) because Petitioner failed to make a ‘substantial showing of the denial of a constitutional right.’” *Id.* at 73 (quoting 28 U.S.C. §2253(c)(2)). Neither party filed objections, and the time to do so has expired.

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge’s recommendation to which a party objects. See 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985).


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<sup>1</sup> The case was originally assigned to Hon. Lawrence J. Vilardo. It was reassigned to the undersigned on February 14, 2020. See Dkt. 12.

This Court carefully reviewed the comprehensive R&R and the relevant record. Based on that review, the Court accepts and adopts Judge Roemer's recommendation. Thus, for the reasons stated above and in the R&R, the relief sought in the petition is DENIED and the petition is DISMISSED. Further, because Petitioner failed to make a substantial showing of the denial of a constitutional right, *see* 28 U.S.C. § 2253(c)(2), the Court DENIES a certificate of appealability. The Clerk of Court shall close this case.

SO ORDERED.

Dated: August 1, 2023  
Buffalo, New York



JOHN L. SINATRA, JR.  
UNITED STATES DISTRICT JUDGE